IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04/07/2003

Coram

The Honourable Mr. Justice V. S. SIRPURKAR
And
The Honourable Mr. Justice M. THANIKACHALAM

W.P. No.19689 OF 1999

1. S. Narayanan
2. M. Muthuramalingam
3. P.G. Ragunath :: Petitioners

-Vs-

1. The Tamil Nadu Treasuries and Accounts
Officers Association, rep. by its President
K. Kamalakanna

2. State of Tamil Nadu, rep. by Secretary to
Government, Finance (T&A I) Department
Fort St. George, Chennai

3. The Commissioner of Treasuries and Accounts
Panagal Building, Chennai 15

4. The Secretary
Tamil Nadu Public Service Commission
Chennai :: Respondents

Petition under Art.226 of the Constitution of India praying
for a Writ of Certiorari as stated in the petition

For Petitioners :: Mr. P. Jayaraman, Senior Counsel
For Mr. V. Chinnasamy

For Respondents :: Mr. S. Vadivelu for R1
Mr. S. Srinivasan, G.A. for R2 & R3
Mr. Paul Vasanthakumar for R4

:ORDER

V.S. SIRPURKAR, J.

Three writ-petitioners have challenged the order of the Tamil

Nadu State Administrative Tribunal (in short 'Tribunal') by which, the Tribunal allowed the original application filed by the first respondent herein, i.e. Tamil Nadu Treasuries and Accounts Officers Association, represented by its President K. Kamalakanna. Few facts would be necessary for understanding the controversy.

2. The original application was filed by the first respondent association seeking to challenge the order G.O. Ms. No.469 dated 2-9-199 7 perhaps, on behalf of M/s. A. Narayanan, V. Sankaranarayanan, R. Kannan and M. Balakrishnan, who were members of that association. In that order, while the petitioners and one other person were promoted, the four aforementioned members of the first respondent association were excluded. This order was a revision of the earlier G.O. No.726, dated 6-12-1996 in which, the aforementioned four members were also included for promotion to the post of Class II Officers in Treasury and Accounts Department. Both the promotions, i.e. the promotion offered by G.O. Ms. No.726 dated 6-12-1996 and the subsequent revision effected by G.O. Ms. No.469 dated 2-9-1997 were purely temporary promotions and a clear-cut idea was given in both the orders that these promotions would not create any right and the promotions were under Rule 39-A of the General Rules for the Tamil Nadu State and Subordinate Services. The petitioners at the relevant i.e. before the advent of G.O. Ms. No.469 dated 2-9-1997 were working as Section Officers in the Finance Department while the aforementioned four members of the first respondent association were working as Class III officers in the Treasury and Accounts Department and were eventually promoted to Class II post by the earlier order dated 6-12-1996. Feeling aggrieved by the revision of this order dated 6-12-1996 whereby, the aforementioned four members of the first respondent association came to excluded and in their place, the three Section Officers from the Finance Department and one Section Officer from the Public Works Department came to be appointed, the original application was filed, challenging the revision of the order. It is an admitted position that on the very same day again a third order came to be passed, viz. G.O. Ms. No.470, promoting twenty-seven persons from Class III posts to Class II posts in Treasury and Accounts Service, which also included the aforementioned four members of the first respondent association. However, that order was made the subject-matter of O.A. No.7187 of 1997, which is a different original application which also came to be disposed of by the Tribunal. In this petition, we are not concerned with that original application. In effect, though on paper, the aforesaid four members of the first respondent association came to be reverted by G.O. Ms. No.469 dated 2-9-1997, they were on the same day offered the promotion to Class II posts. Perhaps, because the reversion of the said four members of the first respondent association would have affected their seniority vis-□-vis the petitioners and one other person, who were promoted by G.O. Ms. No.469 dated 2-9-1997, the said original application O.A. No.7186 of 1997 came to be filed. The Tribunal has allowed that original application and has quashed the order G.O. Ms. No.4 69 dated 2-9-1997, thereby restoring the order G.O. Ms. No.726 dated 6-12-1996. It is against this order that the petitioners have come up with the present writ petition.

3. Learned senior counsel, Shri P. Jayaraman, appearing on behalf of the petitioners has taken us through the rules pertaining to

Treasury and Accounts Service and has also pointed out the subsequent amendment to those rules. The gravamen of the contention of the learned senior counsel predominantly is that firstly, the promotions offered to the four members of the first respondent association were purely temporary and with a specific understanding that those promotions would not create any right whatsoever for the promotees. These were the promotions to which Rule 39(a) of the rules were applicable. Learned senior counsel points out Rule 39(c) and contends that under the said rule, there is a power in the State Government to withdraw the said promotions by recruiting the concerned employee. Learned senior counsel then pointed out that as per the existing rules, there was to be a ratio of 4:1 for promotion to the posts under Class II in Treasury and Accounts Service between Class III officers of Treasury and Accounts Department and the Section Officers of the Finance Department and other allied departments. Learned senior counsel points out that the said ratio was not observed at the time when the promotions were granted by G.O. Ms. No.726 dated 6-12-1996. Inasmuch as all the twenty-seven promotions went in favour of the officers belonging to the Treasury and Accounts Service, it was felt necessary by the Government to revise the said order for restoring the imbalance and, therefore, the said order came to be revised by removing the four junior-most persons from G.O. Ms. No.726 and replacing the four eligible Section Officers of the Finance Department and other allied departments in their place. Learned senior counsel very heavily relied on paragraph 3 of G.O. Ms. No.469 dated 2-9-1997 and contended that the exercise to withdraw the promotions of the four members of the first respondent association was a bona fide exercise and was well within the powers of the Government and, in fact, no prejudice was caused to the said four members of the first respondent association, whose promotions were withdrawn because on the very same day, promotions were granted to them. Learned counsel severely criticized the reasoning adopted by the Tribunal and contended that the law was not correctly applied by it.

4. As against this, Shri Vadivelu, learned counsel appearing on behalf of the first respondent association supported the order of the Tribunal and contended that even if the promotions were granted by G. O. Ms. No.726 dated 6-12-1996 under Rule 39(a), the said promotions could not be withdrawn arbitrarily and for no reason. He further contended that the promotions granted under Rule 39(a) could be withdrawn only by promoting the eligible persons in keeping with the rules. Till such time, the incumbent who has been promoted with the aid of Rule 39(c) must continue to serve. In short, the contention of the learned counsel was the temporary promotees cannot be substituted by another set of temporary promotees. Learned counsel was at pains to point out that even the Section Officers who were promoted by G.O. Ms. No.469 dated 2-9-1997 were granted only temporary promotions. The further contention of the learned counsel is that the language of Rule 39 (a) if read with sub-rule (c), obtains the abovementioned situation.

5. It is on this backdrop, we have to appreciate whether the Tribunal was right in upsetting and quashing G.O. Ms. No.469 dated 2-9-199 7. But, before we take up the rival contentions for consideration, it will be better to see the structure of promotion rules as also the history of these rules because they are very relevant for our purposes.

6. We are dealing with the Department of Treasuries and Accounts. At the relevant time, i.e. in the year 1995-96 but before the advent of G.O.Ms. No.481, there were four classes of officer-cadres available in the said department. Rule 3 of the Special Rules applicable to Tamil Nadu State Treasuries and Accounts Services provides as under:

Appointments:

Appointment to the classes specified in column (1) of the Table below shall be made by the methods specified in the corresponding entries in column (2) thereof:

Class Method of Appointment

Class I (i) Promotion from among the holders of the posts in any of the Categories in Class II.
Or
(ii) Recruitment by transfer from the cadre of non-I.A.S. , Deputy Secretary to Government in the Finance Department.

Class II Promotion from among the holders of the post Class II-A (with effect from 19-1-1987 G.O. Ms. No.614 Fin. (T&A) Dept. , 1-6-1990)

Class IIA Promotions from among the holders of the post in any of the categories in Class III
Or
Recruitment by transfer from the category of Section Officers of Finance Department in the Tamil Nadu General Cash Bureau attached to the Finance Department in the Tamil Nadu General Service.
Or
Recruitment by transfer from among the holder of the post of Assistant Accounts Officer in the Treasuries and Accounts Subordinate Service.
Or
Recruitment by transfer among the holders of the posts of Assistant Treasury Officer and Senior

Superintendents in the
Treasuries and Accounts Subordinate Service.

(With effect from 25-1-1977 G.O. Ms. No.542
Fin. (T&A) Dept. dt. 22-7-1991)

We are not concerned with Class-I officers. The nomenclature of Class-II, Class-IIA and Class-III officers were as under:
Class-II :: Pay & Accounts Officers/Chief Accounts
Officers
Class-II A :: Treasury Officers
Class III :: Accounts Officers/Assistant Pay &
Accounts Officers/
Assistant Superintendent of Stamps

The position which is obtained from this rule is that a person could be appointed to class II post only by promotion from amongst the holders of Class-IIA posts, viz. Treasury Officers which post itself could be filled by promotion from amongst the Class III post-olders or by recruitment by transfer from the category of Section Officers working in the Finance Department in Tamil Nadu General Cash Bureau attached to the Finance Department in Tamil Nadu General Service. We are not concerned with the other sources for the holding of the post of Class-IIA. It is an admitted position that all the concerned four members of the first respondent association, whose promotions we are concerned with here, were Class-III officers, viz. Accounts Officers or Assistant Pay and Accounts Officers or Assistant Superintendent of Stamps.

7. It may be stated for the sake of history that originally the category of Class-II was not there and was introduced only by G.O. Ms. No.614 Finance (Treasuries and Accounts) Department dated 1-6-1990. It is also an admitted position as stated in the original application filed that for every five posts in Class-IIA, the first four vacancies were reserved for promotion of Class-III post-holders while the fifth vacancy went by recruitment by transfer and amongst them also the promotees were to be ranked senior to the said Section Officer, who was recruited by transfer. By G.O. Ms. No.481 dated 16-6-1995 , all Class II-A post-holders in the Treasuries and Accounts Service stood abolished and in their place, equivalent posts in Class II in Treasuries and Accounts Service were deemed to have been created. By that Government Order, twenty-eight posts in the scale of Rs.2500-75-2800-100-4200 came to be upgraded to the scale of pay of Rs.3000-100-3500-125-4500 and the Director of Treasuries a nd Accounts was directed to submit suitable proposal to the Government separately for amending the Tamil Nadu State Treasury and Accounts Special Rules. He was also directed to take into account the mode of recruitment to Class II posts from Class III category. Needless to mention that because of this Class III post-holders were liable to be promoted straight to Class II and like them even the Section Officers in the Finance Department and the other allied departments who were eligible for appointment in the Class IIA posts by their transfer were also became entitled to be promoted to Class-II posts. It is,

however, worth-noting that though the posts in Class-IIA were abolished, rule was not amended thereby obtaining the position that the qualified Section Officers from the Finance Department could still continue to come on transfer as Treasury Officer in Class-IIA posts. It seems that there was some delay on the part of the Government in taking the decision on the mode of appointment to Class-II posts from Section Officers in the Finance Department as also by promotion from Class-III officers and, therefore, in view of the urgency of

the situation, the Government issued G.O.Ms. No.726 (Finance) dated 6-12-1996. We have already described the various features of the said Government Order.

8. Petitioners contend that the Government had called for the willingness from the qualified Section Officers working in the Secretariat for appointment to Class-II posts for the year 1995-96 and accordingly, some of the Departments in the Secretariat sponsored the names of the willing and qualified Section Officers. However, these Section Officers were not appointed and instead twenty-seven persons, purely from the Treasuries and Accounts Service, belonging to Class-II posts, like the concerned four members of the first respondent association came to be promoted by G.O. Ms. No.926 dated 6-12-1996. Petitioners further contend that after the willingness was received by the Government from the Section Officers and the names were sponsored by the various Departments of the Secretariat of those Section Officers, the need was felt to promote the Section Officers in keeping with the ratio of 4:1 and it was, therefore, that G.O. Ms. No.726 dated 6-12-1996 came to be revised by G.O. Ms. No.469 dated 2-9-1997. This factual contention has not only been supported by the Government but has remained uncontroverted by the first respondent association. Indeed, when the text of G.O. Ms. No.469 dated 2-9-1997 is read on the backdrop of G.O. Ms. No.726 dated 6-12-1996, there can be really no dispute with this proposition.

9. Thus, it becomes factually clear that pending the amendment of the rules and by way of taking emergent action, the Government firstly issued G.O. Ms. No.726 dated 6-12-1996 and then came with G.O.Ms. No.469 dated 2-9-1997, revising the earlier Government Order dated 6-12-1996 and restoring the balance by promoting the four Section Officers and reverting the four Class-III officers, who were promoted to Class-II posts. Indeed, learned counsel appearing on behalf of the respondents could not dispute this factual position. However, the contention of Mr. Vadivelu was that for correcting this imbalance also, the concerned promotees could not have been reverted as a right was created in them at least to stay in the promoted posts till such time they were substituted by the regularly promoted persons. In short, now everything would depend upon the interpretation of clauses (a), (c) and (e) of Rule 39, which run as under:
"(a) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a higher category in a service or class by promotion from lower category and there would be undue delay in making such promotion in accordance with the rules, the appointing authority may temporarily promote a person, who possesses the qualifications prescribed for the post, otherwise than in

accordance with the rules.
(c) A person temporarily promoted under sub-rule (a) shall be replaced as soon as possible by the member of the service who is entitled to the promotion under the rules.
(e) A person promoted under sub-rule (a), (b) or (d) shall not be regarded as a probationer in the higher category or be entitled by reason only of such promotion to any preferential claim to future promotion to such higher category. The services of a person promoted under sub-rule (a), (b) or (d) shall be liable to be terminated by the appointing authority at any time without notice and without any reason being assigned."

10. We have deliberately quoted the rules above so as to examine the contention that once a promotion is granted under rule 3 9(a), the only way to set it at naught would be to regularly promote any employee in place of such promoted person. Until such time, the promotee under Rule 39(a) would have a right to stay in that post.

11. A plain reading of the relevant rule does not favour this interpretation. It has to be realized that rule 39(a) is meant for emergent situation and for administrative exigencies which would require, at times, to order emergent promotions or even to shift one promotee-officer from one place to another. Some times, it is necessary to have the post filled because of a peculiar factual situation and the entitled person is not in a position to be appointed may be on account of the distance or any other reason. It is under such circumstances, the promotions are granted. These promotions do not create any right. It is the plain language of the rules. If the language of the rules specifically provides that such promotions shall not create any right and as in the present case a clear-cut notice is given to the promotees under G.O. Ms. No.726 that their promotion will not clothe them with any status or right, it is difficult to hold that still such persons would have a right to stay in the post and that such right would continue till such time as they are substituted with a regularly promoted officers. Mr. Vadivelu very heavily relied upon the clause (c) of rule 39. We do appreciate that under that rule, the Government is bound to make regular promotions and should not keep on procrastinating on that issue and that the officiate of the person who is promoted under rule 39(a) should be for as short period as possible. However, though this creates a power in the Government and in a sense spells out a direction to the Government to exercise that power, it does not create a right in the promotee, whose promotion is under rule 39(a). To say that only a regularly promoted employee should substitute a promotee under rule 39(a) and till such time that promoted officer should be allowed to continue on the post would be to gag the administrative scope and independence of the Government. Again, we cannot be unmindful of the specific language of rule 39(e), the language of which is positive and mandatory. Under that, no right is created in favour of the promotee under rule 39(a). Such promotions under rule 39(a) are fortitious in nature and, therefore, would not create any right.

12. An argument was tried to be advanced by Mr. Vadivelu that where an appointment is made even with a condition that such appointment can be terminated without giving any reason, there cannot be any arbitrary

termination of such an appointee. We fully agree with the proposition though with some reservation. However, nothing has been brought on record to suggest that the exercise on the part of the
Government in this case to revise G.O.Ms. No.726 was in any manner arbitrary. The Government has not only given cogent reasons for that exercise in G.O. Ms. No.469 but, has also justified the action that but for this, an injustice would have been spelt out for the Section Officers who could have claimed every fifth post after the four posts filled in by the officers belonging to the Treasuries and Accounts Service. When we look at the revised list, it will be seen that the present four petitioners have been included only as per that ratio (4:1) and in consonance with their seniority.

13. Mr. Vadivelu relied upon the reported decision in The Manager, Government Branch Press v. D.B. Belliappa (AIR 1979 SC 42 9) in support of the proposition that a power of termination of the services of the temporary Government servant is not an absolute power and that some reasons would be required to be given to rule out the arbitrariness of such exercise, in the absence of which, the exercise would be rendered arbitrary and hit by Art.16. We have absolutely no dispute with the proposition. However, in the present case, that is not the situation. A glance at G.O. Ms. No.469 would clarify the situation and a necessity for an exercise to revise G.O. Ms. No.726. We do not think that the action is in any manner arbitrary. This is apart from the fact that we are speaking of the promotions and not the initial appointment and the two concepts would have different shades and texture. Paragraph 21 of Belliappa□s case would clearly suggest that the learned Judges there noted that there were no special circumstances or reasons disclosed for the termination and that this went on to suggest
discriminatory treatment to the employee in that case. In short, this judgment would be of no help to Mr. Vadivelu.

14. On the other hand, learned senior counsel, Shri Jayaraman, invited our attention to the reported decision in M.K. SHANMUGAM AND ANOTHER v. UNION OF INDIA AND OTHERS [2000 (4) SCC 476]. Learned counsel relied on the following observations:
□The view expressed by this Court in these cases have been again considered in the decisions in anuradha Bodi (Dr.) v. Municipal Corpn. of Delhi (1998) 5 SCC 293; Keshav Deo v. State of U.P. (1999) 1 SCC 28 0; Major Yogendra Narain Yadav v. Bindeshwar Prasad (1997) 2 SCC 150; I.K. Sukhija v. Union of India (1997) 6 SCC 406 and Govt. of A.P. v. Y. Sagareswara Rao (1995 Supp. (1) SCC 16) but all these decisions do not point out that in case the promotions had been made ad hoc and they are subsequently regularized in the service in all the cases, ad hoc service should be reckoned for the purpose of seniority. It is only in those cases where initially they had been recruited even though they have been appointed ad hoc the recruitment was subject to the same process as it had been done in the case of regular appointment and that the same was not a stopgap arrangement.□
A careful reading of this case suggests that the Supreme Court has cautioned that the ad hoc or fortuitous appointment do not create any right much less of seniority. As is obvious, the whole dispute is only because of the apprehension of the members of the first respondent association that they would be rendered juniors to those persons who have been promoted now. The

question of seniority is really not in the issue in these cases. We have to simply decide as to whether the appointments made under Rule 39(a) create any right and our answer is clearly in negative.

15. Two other decisions were cited by the learned senior counsel but, in the factual situations, we do not think it necessary to refer to them as we have clearly held that there can be no right in favour of the promotees under G.O. Ms. No.726 and that there was nothing wrong in revising the said Government Order.

16. It was argued, almost by way of desperation, that the list could not be revised for promoting the Section Officers who were from different Departments. Mr. Vadivelu tried to take us to the definition of the term "Promotion", which reads as under:
"Promotion means the appointment of a member of any category or grade of service or class of service to a higher category or grade of such service or class."
Mr. Vadivelu submitted that there could not be a promotion from the different service and for that purpose the members of the first respondent association could not be reverted.

17. The whole thrust of the argument is on Rule 39 (c). We have already considered that rule and we do not see any fetters on the power of the Government to withdraw the promotions which have been made under rule 39(a). Once that position is clear, the fact as to who is promoted goes in the background. This is apart from the fact that the rules as in existence permitted the Section Officers to be transferred as Class-II officers and/or to be promoted to Class-II posts. Even subsequently, the rules have been amended to this effect by abolishing Class-IIA services altogether and by providing the promotional channel to the Section Officers. It is obvious that before the rules were amended this exercise was done by way of a stopgap arrangement and with the further idea to see that the Section Officers are not prejudiced or no injustice is caused to them. In that view, we do not think that the view taken by the Tribunal is justified.

18. In paragraph 25 of its order, the Tribunal has made an observation while interpreting Rule 39 that when the power of exemption is granted to the authority, that power has to be exercised only once. We do not see any support for this proposition either in the language of the rule or in any decided cases. If this was the intent, there would have been an indication in the language of Rule 39(a) or (c). The Tribunal has further stated - "It cannot be exercised according to whims and fancies more than once". We fail to understand the logic behind this. True it is, the power has never to be exercised as per the whims and fancies of the concerned authority but, here the Tribunal has given no indication as to why it has held that this power has been used as per whims and fancies of the concerned authorities. We have already shown the necessity of the exercise of that power. We cannot also agree with the inference drawn by the Tribunal in paragraph 26 of the order to the effect that the power of exemption has to be exercised in certain circumstances only. We only say that the power of

exemption under Rule 36(a) can be exercised within the parameters of that rule, the language of which is clear enough. We also do not know as to why the Tribunal has made the following observation:
"It cannot be assumed that the urgency continued all along till the Section Officers in the Secretariat chose to give their willingness."
It cannot be brooked that the only reason to exercise the power under Rule 36(a) is the urgency. There could be other exigencies also. The learned Member of the Tribunal has further held that law does not permit any authority to cancel the promotion given to a person on the only ground that the promotion was temporary and that some acceptable reason must be forthcoming. We have already shown that there was good reason for doing so and that was to restore the imbalance by giving the promotions in breach of the proportion provided by the rule.

19. In short, we do not agree with the order of the Tribunal and would choose to set aside the same. In the result, the writ petition is allowed. Original Application is ordered to be dismissed. The Rule made in the writ petition is made absolute. There will be no order as to costs.

Index:Yes
Website: Yes
Jai

To:
1. Secretary to Government
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2. The Commissioner of Treasuries and Accounts
Panagal Buildings
Chennai 15
3. The Secretary
Tamil Nadu Public Service Commission
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